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Gulf of Venezuela: A Proposed Delimitation

Roberto D. Klock

COMMENT

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I. INTRODUCTION

Conflicting territorial claims between two nations are a familiar chapter of international law. Interesting questions arise when the contested area is finally delimited, but no provisions are made for outlying marine rights. Are corresponding territorial sea and continental shelf rights impliedly granted in such a situation? If so, would territorial sea rights be based upon the three mile rule in force at the time of the delimitation or upon the current twelve mile rule? If the parties remain silent as to the delimitation of the marine rights, does that silence indicate that the original marine rights of each party remain undisturbed, subject to future negotiation? Do any special circumstances create exceptions to general rules?

These considerations are relevant to the delimitation of the Gulf of Venezuela. Pursuant to the 1941 Treaty on Demarcation of Borders and Navigation of Common Rivers between Colombia and Venezuela (hereinafter referred to as the Treaty),[1] Venezuela relinquished to Colombia most of its claim to an arid region called the Guajira, a peninsula extending along the Gulf of Venezuela and Caribbean Sea. Although title to the Guajira resulted in providing Colombia with a small coast adjacent to the Gulf of Venezuela, the treaty made no mention of respective marine rights in the Gulf. The present dispute concerns the respective claims of Colombia and Venezuela to territorial sea and continental shelf rights in the Gulf of Venezuela.

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Particularly at stake is the income from proven oil deposits and valuable minerals in the seabed of the Gulf.[2]

The claims of both countries overlap. Colombia claims that the territorial sea and continental shelf rights in the Gulf should be resolved by use of the median or equidistance line. On the other hand, Venezuela relies upon historical title to the Gulf and other special circumstances, and argues that since the 1941 Treaty makes no mention of territorial rights in the Gulf, silence does not forfeit any long-held Venezuelan interests in the Gulf.

Precise territorial boundaries along the border between Colombia and Venezuela have been the subject of numerous controversies and proposals.[3] This paper examines the two areas of the Gulf of Venezuela which are the subject of the current controversy. The major dispute centers on the delimitation of the Gulf south of Castilletes as between adjacent states in the Guajira Peninsula. The other problem involves marine rights pertaining to Los Monjes, a small group of Venezuelan islands situated between opposite states at the entrance to the Gulf. Finally, this paper suggests a delimitation which, if accepted by the parties, would resolve this lingering problem.

II. Historical Background

The territories of both Colombia and Venezuela were once Spanish colonies. The viceroyalty at Lima dominated all of South America except the coast of Venezuela, which was subject to its own captain-general.[4] Following their independence from Spain, Colombia,

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2. It is estimated that at least twenty million barrels of oil are subject to capture. *See* H. Holguin Peláez, Proyecciones de un Límite Marítimo Entre Colombia y Venezuela 88 (1971) (hereinafter cited as Holguin Peláez).

3. An attache to one of the embassies in Washington asked the writer several years ago to show him how to lay down a 'boundary' between Colombia and Venezuela in these waters. No literature on such techniques was found, and several hypotheses were formulated and tried successively. Perhaps no more interesting problem of this sort could have been posed, for the example has about all possible variations.

Boggs, *Delimitation of Seaward Areas under National Jurisdiction*, 45 Am. J. Int'l L. 240, 262 n.35 (1951) (hereinafter cited as Boggs). *See generally* R. Carpio Castillo, Fronteras Marítimas de Venezuela 93-119 (1974) (hereinafter cited as Carpio Castillo); E. Zuleta Angel, El Llamado Golfo de Venezuela 85-108 (1971) (hereinafter cited as Zuleta Angel); Ascanio Jiménez, *supra* note 1, at 76-82; Holguin Peláez, *supra* note 2, at 57-90.

4. Until 1550, Colombia and Venezuela were under the jurisdiction of the Audiencia of Santo Domingo. Spain then established the Audiencia of

Venezuela, Ecuador, and Panama were the subject of Simon Bolivar's dream of one united nation, Gran Colombia. However, in 1830, Ecuador and Venezuela withdrew from the Confederation.

The boundaries between Colombia and Venezuela were never precisely demarcated during Spanish rule.[5] Nevertheless, since the days of the first Spanish expeditions, Cabo de la Vela served as the border on the Caribbean Sea.[6] This site, located in the northwestern part of the Guajira Peninsula in present-day Colombia, allocated virtually all of the Guajira to Venezuela, and as a result, Venezuelan

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Santa Fe de Bogotá with jurisdiction over what are now Colombia and Venezuela, then collectively called New Granada. The regime became a viceroyalty (Viceroyalty of New Granada) in 1718, and this arrangement continued until 1777 when Venezuela was made a separate captaincy-general directly under the Crown. Isolated from both Bogotá and Spain, Venezuela exercised a great deal of local autonomy throughout the colonial period.

Viceroys and captains-general had essentially the same functions, differing only in the importance and the extent of the territory assigned to the jurisdiction of the former. Each was the supreme civil and military officer of his territory. In 1700, there were two great American viceroyalties: the viceroyalty of New Spain, with its capital at Mexico City, included all Spanish possessions north of the Isthmus of Panama; that of Peru, with its capital at Lima, embraced all of Spanish America *except the coast of Venezuela.* Captains-general were theoretically subordinate to the viceroys but in practice were virtually independent of them and governed large subdivisions of these vast jurisdictions.

5. To a geographer, the term "demarcation" refers to the actual laying down of a boundary line on the ground, and its definition by boundary pillars or other similar physical means. "Delimitation," on the other hand, means the determination of a boundary line, by treaty or otherwise, and its definition, in written, verbal terms. Boggs, *supra* note 4, at 242 n.10.

6. Several authorities can be found which substantiate this historical claim to the peninsula and thus, much of the Gulf of Venezuela. Accounts about the Spanish explorer, Alonso de Ojeda, who with Amerigo Vespucci first explored the coasts of Venezuela, often refer to that small cape as the dividing point between the two territories. A more persuasive reference is found in an agreement made in 1528 between Carlos V of Castilla and the German banking family Welser from Uhlm. In order to outbid Francis I of France for the vacant title of Holy Roman Emperor, Carlos V had borrowed large sums from the Welsers. These loans were secured by an indefinite lease on Venezuela, extending from Cabo de la Vela, with the right to found cities, open mines, and take slaves. In 1576, López de Velesco referred to Cabo de la Vela as the point where Venezuelan soil ends in his work GEOGRAFÍA DE LAS INDIAS. Furthermore, in 1789, Antonio de Alcedo made a similar statement in DICCIONARIO HISTÓRICO-GEOGRÁFICO DE AMÉRICA. Other writings are in accord, inferring that Cabo de la Vela marked the western limit of Venezuela at least up to the time of independence, a period of more than three hundred years. *See generally* J. LONDONO PAREDES, DERECHO TERRITORIAL DE COLOMBIA 20, 29 (1973) (hereinafter cited as Londono Paredes); Ascanio Jiménez, *supra* note 1, at 24; Carpio Castillo, *supra* note 4, at 78-79; J. LONDONO, NUEVA GEOPOLÍTICA DE COLOMBIA 36 (undated).

territory surrounded the Gulf. Venezuela, therefore, has a historical claim to these territories.

Upon achieving independence, Venezuela and Colombia implicitly included the doctrine of *uti possidetis*[7] in their constitutions.[8] Under this doctrine, each nation would retain the territories that were held immediately prior to the date of independence in 1810. However, due to the vagueness of the Spanish demarcation of the boundaries, the inaccessibility of the frontier areas, and the inaccuracy of maps, the two countries were compelled to resort to continued negotiations and surveys.

In 1833, representatives of both nations initialed a treaty which, among other things, would have established a definite boundary in the Guajira.[9] Although ratified by Colombia and overwhelmingly recommended by Venezuelan negotiators, the treaty was ultimately rejected by Venezuela because the border would have been established at Cabo de Chichivacoa, a point which divided the Guajira Peninsula into two equal areas; thus, Venezuela's territorial claims would have been reduced. Nevertheless, whether the border was established at

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7. The meaning of this term in regard to international boundaries in Latin America is somewhat different from that ascribed to it in civil law and is intended to denote permanent rather than temporary possession. In Latin America, boundary disputes arbitrators were often called upon by the parties to apply as their criterion the rule of *uti possidetis* of the period of independence, in this case 1810. The assumption was that it was possible to trace, by a study of the Spanish decrees, the precise lines of division of the former Spanish colonies. However, this assumption was usually not borne out by realities. It was found in many instances that the new states exercised at the time of the cessation of Spanish rule—sometimes *bona fide* and without intentional usurpation—state authority beyond the border, lines apparently designed as the limit of their territorial jurisdiction. The state which has expanded in this manner was prone to insist that the meaning of *uti possidetis* was administrative possession as it actually existed at the time of independence, while the opposing party usually contended that the principle implied the restriction of sovereignty to those areas which were rightfully occupied by the antecedent colonial unit. The two conflicting theories of *uti possidetis* became known as *uti possidetis de facto* and *uti possidetis de jure* respectively. Thus, the doctrine of *uti possidetis* can be considered simply as a principle by which Latin America settles its boundary disputes. It is not recognized internationally and is binding only on those who expressly agree to its application. Y. BLUM, HISTORIC TITLES IN INTERNATIONAL LAW 341-42 (1965).

8. CONSTITUTION title I, § I, art. 2 (Colom.); CONSTITUTION title I, art. 5 (Venez.).

9. Treaty of Alliance, Friendship, Commerce, Navigation, and Boundaries (also known as Pombo-Michelena Treaty), Dec. 14, 1833, Colombia-Venezuela. *See* Carpio Castillo, *supra* note 4, at 77-85.

Cabo de Chichivacoa or Cabo de la Vela, Venezuela would have remained the only country situated upon the Gulf of Venezuela.

Negotiations did not resume until 1841. During these negotiations, Venezuela again insisted that the border of the Guajira be established at Cabo de la Vela. However, by 1841, the focus of the controversy shifted, for the main territorial concern was no longer the Guajira. Instead, the territorial dispute centered around the source of a small stream, the Río de Oro, which empties into Lake Maracaibo. When it was discovered that the Río de Oro had two branches, both Colombia and Venezuela claimed the territory between the branches. In addition, disagreement over an area south of the Meta River and west of the Orinoco and its tributaries lessened the significance of the Guajira dispute.[10] With respect to the Guajira, Venezuela reiterated its insistence on Cabo de la Vela.

In 1842, Colombia markedly altered its position with respect to the territorial dispute. Rejecting any notion of Venezuelan jurisdiction in the Guajira, Colombia asserted sovereignty over the entire Guajira and over territories as far east as Sinamaica, a town lying at the entrance of the straits to Lake Maracaibo. To support these claims, Colombia introduced newly-compiled Spanish documents.[11] Evidently, Colombia's interest in these territories was based on the discovery that the Maracaibo basin, belonging to Venezuela in the sixteenth century, was later incorporated into the Virreinato of Santa Fe of Colombia, although it was returned as part of the captaincy-general of Venezuela in 1777.[12]

In 1844, another round of negotiations resulted in a severance of diplomatic relations. Border incidents had become frequent between the two countries. In 1852, negotiations resumed and resulted in an agreement to establish the border at Cabo de Chichivacoa. Venezuela also sought to include a commercial accord and military alliance in this agreement. However, Colombia objected both to the terms of the commercial accord and to the inclusion of a military alliance.

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10. *See* U.S. DEP'T OF THE ARMY, AREA HANDBOOK FOR VENEZUELA 309 (1964); A. GALINDO, EL ARBITRAMENTO DE LÍMITES CON VENEZUELA 167-98 (1982).

11. *See, e.g.*, Real Cédula de 1768, Real Cédula de 1786, and Real Cédula de 1792.

12. *See* P. VILLA, NUEVA GEOGRAFIA DE COLOMBIA 6 (1945). *See also* Ascanio Jiménez, *supra* note 1, at 26.

By 1881, the two countries agreed to submit the entire border dispute to arbitration.[13] Alfonso XII, the King of Spain, accepted the request to serve as arbitrator. Upon his death, the two nations agreed that María Cristina, the Princess Regent of Spain, should assume the role.[14] Not until 1891 did she render her decision which abandoned both Cabo de Chichivacoa and Cabo de la Vela, and instead marked Los Mogotes de los Frailes as the border of the Guajira. Her decision unfortunately produced only confusion since this site could not be precisely identified. The reason for her decision remains unknown, but certainly the result was to transfer more of the peninsula to Colombia.[15]

Venezuela had not expected such an extreme departure from the traditional claims of either country. Venezuela claimed that execution of the award required further administrative and legislative approval, and thus avoided the enactment of María Cristina's border decision. Subsequent efforts to implement the arbitration decision were futile. The failure to arrive at an agreement was also partly attributable to "golpes de estado" which occurred in both nations.[16]

Seven years after María Cristina conferred the ruling, the two countries affirmed the Rico-Briceno Pact to execute that decision.[17]

13. Treaty on Arbitration between the United States of Colombia and the United States of Venezuela, Sept. 14, 1881, Colombia-Venezuela, *reprinted in* MINISTERIO DE RELACIONES EXTERIORES, *supra* note 1, at 9.

14. Declaration of Paris, Feb. 15, 1886, Colombia-Venezuela, *reprinted in* MINISTERIO DE RELACIONES EXTERIORES, *supra* note 1, at 11.

15. From the hillcocks called Los Frailes, taking as the starting point the point nearest Juyachi, following a straight line with the line which divides the Upper Valley from the Province of Maracaibo and the Hacha River on the upper side of the Oca Mountains, the limits of the latter mountains serving as boundary towards Valledupar on the side of the ridge, and towards the Juyachi hillcock on the side of the sea coast. Boundary Dispute (Colom. v. Venez.), sec. 1, *reprinted in* MINISTERIO DE RELACIONES EXTERIORES, *supra* note 1, at 12-14; Pulecio de Guarin, *supra* note 1, at 144-46. An asserted copy of the map used by the Spanish arbitrator places Los Frailes a few miles south of Juyachi. MINISTERIO DE RELACIONES EXTERIORES, *supra* note 1, at plancha 1. *But see* LOS ESTADOS UNIDOS DE VENEZUELA, RÉPLICA DE LOS ESTADOS UNIDOS DE VENEZUELA A LA RESPUESTA DE COLOMBIA 7 (1921).

16. During a visit to the Philadelphia Exposition in 1876, the Brazilian Emperor, Dom Pedro II, reputedly remarked that some of Brazil's neighbors had more revolutions per minute than many of the machines on exhibit. In fact, Venezuela is said to have undergone fifty-two major revolutions in the first century of independent life. From 1899-1902 Colombia experienced one of history's bloodiest civil wars, the so-called War of the Thousand Days. *See* R. HUMPHREYS, TRADITION AND REVOLT IN LATIN AMERICA 13 (1969).

17. Convention Regulating the Extension of the Arbitral Decision on the Question of Boundaries between Colombia and Venezuela (also known as the

The Pact provided that the parties would agree to execute the judgment of the Queen of Spain, and that a joint commission, composed of representatives from both countries, would be named to demarcate the boundaries. With respect to the Guajira, the joint commission immediately was burdened by the problem of identifying Los Mogotes de los Frailes. Only a general area could be located; a line was proposed based upon recognized points in the Guajira as described in the Spanish decision. The joint commission also determined that Colombia was entitled to an area of 5000 square kilometers in the Guajira north of the Venezuelan town of Castilletes. However, given the non-commercial character of this arid region, little interest was shown in accurate delimitation, and thus, no formal agreement was reached.

Confusion over the Colombian-Venezuelan boundary persisted. In 1916, Colombia and Venezuela agreed to another arbitration proceeding.[18] The President of Switzerland was designated as arbitrator and in 1922, he affirmed the 1891 Spanish arbitration. With respect to the Guajira, he declared that Colombia was entitled to take possession of the area north of Castilletes.[19]

This affirmation of a hopelessly confusing decision was obviously unsatisfactory. Neither Colombia nor Venezuela could clearly identify its territory. As a result, in 1941, the parties conclusively established their territorial limits in the Guajira and elsewhere, with the town of Castilletes serving as the border on the Gulf.[20] Thus, the official boundary became a line extending to the Gulf, conferring almost all of the Guajira to Colombia, and, more importantly, providing Colombia with a coast adjacent to the entrance of the Gulf of Venezuela.

III. Positions of the Parties

Gulf of Venezuela

The major controversy concerns the delimitation of overlapping claims in the Gulf south of Castilletes. Colombia wants to apply a

Rico-Briceno Pact), Dec. 30, 1898, Colombia-Venezuela, *reprinted in* Ministerio de Relaciones Exteriores, *supra* note 1, at 15-16.

18. Convention between Colombia and the United States of Venezuela, Nov. 3, 1916, Colombia-Venezuela, *reprinted in* Ministerio de Relaciones Exteriores, *supra* note 1, at 73-74.

19. However, the principal controversy again revolved around the source of the Río de Oro, so the Guajira dispute became a minor issue. Boundary Dispute (Colom. v. Venez.), 1 R. Int'l Arb. Awards 223 (1922).

20. *See* note 1 *supra.*

median or equidistant line for this purpose. Given the geographical configuration of the coast, a median line would extend in a southeasterly direction from Castilletes to a point equidistant between Castilletes and the southern coast of the Gulf of Venezuela. From that point, the line would run north between the Guajira and Paraguana Peninsulas to the Caribbean Sea, dividing the entrance of the Gulf into two equidistant areas. If, however, one followed any latitude intersecting this median line south of Castilletes, one would enter Venezuela.

Venezuela argues that the Gulf has economically, geographically, and historically been Venezuelan waters since colonial rule. In response to the Colombian proposal, Venezuela insists that the area south of Castilletes is unequivocally Venezuelan territory and thus, non-negotiable. The Venezuelan position calls for an extension of the line from Castilletes across the Gulf in a northeasterly orientation from the international borderline in the Guajira. This method achieves an effect similar to the Colombian position: if one followed any latitude to the west that intersects this "Venezuelan" line, one would enter Colombia.

Los Monjes

The other area of controversy in the Gulf concerns the territorial rights, and particularly the continental shelf rights, pertaining to Los Monjes, a group of rocky, uninhabited islands which form an archipelago about eighteen miles east of the northern Colombian Guajira and lie at the entrance to the Gulf. The title to these islands had provoked a heated discord between Colombia and Venezuela, particularly when the 1941 Treaty effected a border change finally placing Los Monjes geographically closer to Colombia than Venezuela. However, in 1952, Colombia expressly recognized Venezuelan sovereignty over Los Monjes.[21]

Colombia would disregard any territorial sea and continental shelf rights for Los Monjes. Instead, Colombia would delimit this area as between opposite states—the Guajira and Paraguana Peninsulas—by the median line, as if Los Monjes did not exist. In essence, Colombia feels that it would be absurd to recognize continental shelf rights for these uninhabited islands when Colombia's own continental shelf extends beyond Los Monjes.

21. Letter from (signature illegible) to Luis Gerónimo Pietri, Ambassador Plenipotentiary of Venezuela, Nov. 22, 1952, *reprinted in* Carpio Castillo, *supra* note 4, at 137-42.

On the other hand, while Venezuela contends that Los Monjes has both territorial sea and continental shelf rights, Venezuela does not attempt to enclose Los Monjes within its continental baseline. Instead, Venezuela proposes that delimitation should proceed by use of the median or equidistant line between Los Monjes and the Guajira. Thus, a median line would effectively limit total Colombian jurisdiction to a distance of about nine miles from the Guajira Peninsula, a proposition unacceptable to Colombia.

IV. Applicable Principles

In order to delimit the Gulf of Venezuela, one instinctively would turn to relevant multilateral conventions: the Convention on the Territorial Sea and the Contiguous Zone,[22] and the Convention on the Continental Shelf.[23] However, although Colombia ratified the Convention on the Continental Shelf, it was not a party to the Convention on the Territorial Sea and the Contiguous Zone.[24] Additionally, while Venezuela ratified both conventions, it made express reservations to the provisions concerning the use of the median line for delimitation between opposite or adjacent states.[25] Because the applicable articles

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22. Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1607, T.I.A.S. No. 5639. 516 U.N.T.S. 205 (1958).

23. Convention on the Continental Shelf, 15 U.S.T. 471, T.I.A.S. No. 5578, 450 U.N.T.S. 11 (1958).

24. Colombia voted for the six plus six formula, six miles of territorial sea plus six miles of contiguous zone, introduced by the United States and Canada. Venezuela opposed it. *See generally* Zuleta Angel, *supra* note 4, at 15. For an account of Colombia's position at the Law of the Sea Conference by its negotiators, *see* República de Colombia, Ministerio de Relaciones Exteriores, Informe de los Embajadores Juan Uribe Holguin y José Joaquín Caicedo Castilla (1963).

In regard to the contiguous zone, the most likely disposition is to disregard it. In light of the Santo Domingo Declaration, both Colombia and Venezuela are among the nations advocating a twelve mile territorial sea with a two hundred mile patrimonial sea or economic zone. The concept of the contiguous zone thus could be abandoned. Among such nations this view appears prevalent because there is no reference to this zone in any of the proposals on the patrimonial sea or economic zone, and according to the statements made by the sponsors of some of these proposals, the omission is intentional. *See* Santo Domingo Declaration, U.N. GAOR, Supp. (No. 21) 70-12, U.N. Doc. A/8721 (1972); Aguilar, *The Patrimonial Sea or Economic Zone Concept*, 11 San Diego L. Rev. 579, 597 (1974).

25. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States

have not been accepted unequivocally by both Colombia and Venezuela, neither convention may be employed for the settlement of this dispute.[26]

Several years before any international convention went into effect, the International Court of Justice decided the *Fisheries Case*,[27] which involved delimitation of the territorial sea. Although that case particularly involved the validity of Norway's measurement of territorial sea from baselines drawn between selected points on outlying islands, certain principles may be relevant here:

> is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historical title or other special circumstances to delimit the territorial sea of the two States in a way which is at variance with this provision.

Convention on the Territorial Sea and the Contiguous Zone, *supra* note 23, at art. 12.

> Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.
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> Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

Convention on the Continental Shelf, *supra* note 24, at art. 6.

The Venezuelan position regarding delimitation between opposite or adjacent states was that it should be brought about by means of an agreement between those states or through other methods recognized by international law. The attitude was that the existing situations in the world were too diverse to justify use of one general rule of law, and thus, the question should be left to the parties affected. *See* Holguin Peláez, *supra* note 2, at 49.

26. In the *North Sea Continental Shelf Cases*, the issue was whether Article 6 of the Convention on the Continental Shelf reflected or crystallized a rule of customary international law as contended by Denmark and the Netherlands. They sought to apply the equidistance method of delimiting the continental shelf of adjacent states incorporated in Article 6 upon the Federal Republic of Germany, even though it was not a party to the Convention as Denmark and the Netherlands were. After reviewing the history of the equidistance method, the International Court of Justice determined it was not a rule of customary international law and thus was binding only on parties to the Convention. North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), [1969] I.C.J. 3 (hereinafter cited as North Sea Cases).

27. Fisheries Case (United Kingdom v. Norway), [1951] I.C.J. 116.

1. Delimitation of the territorial waters of a state always has an international law aspect, even though the act of delimitation is a unilateral act undertaken by the coastal state concerned.[28]

2. A close dependence between the land domain and the territorial waters is an essential factor to consider. In the *Fisheries Case,* it was the land which conferred upon the coastal state a right to the waters off its coasts. A certain degree of latitude is necessary to adapt the delimitation of territorial waters to practical needs and local requirements.[29]

3. In drawing its baselines, a state must not depart to any appreciable extent from the general direction of the coast. A fundamental consideration in the *Fisheries Case* was the relationship existing between certain sea areas and the land formations which divided or surrounded them. Such considerations should be liberally applied in the case of a coastline with an unusual geographical configuration. One relevant question in connection with the choice of baselines is whether the relevant sea areas are so closely linked with the land domain that it would be reasonable to treat such waters as internal waters.[30]

4. In addition to geographical standards, peculiar local economic interests in the waters, evidenced by long usage, are to be considered. A state should be allowed greater latitude if commercial activity, such as fishing, is essential to the livelihood of a region. The term "long usage," however, must not be confused with historical title. Historical title is only one of several factors to be taken into account in applying general principles of international law to a particular case.[31]

Additionally, in the *North Sea Cases,*[32] the International Court of Justice set out the principles and rules of international law applicable, in the absence of a binding convention, to the delimitation of the continental shelf between adjacent or opposite states. To summarize:

1. Delimitation is to be effected by agreement in accordance with equitable principles taking into account all relevant circumstances: a) the general configuration of the coasts of the parties, as well as the presence of any special or unusual features;[33] b) the physical and geological structure, and natural resources, of the continental shelf areas

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28. *Id.* at 132.
29. *Id.* at 133.
30. *Id.*
31. *Id.*
32. *See* North Sea Cases, *supra* note 26.
33. *Id.* at 54.

involved;[34] and c) a reasonable degree of proportionality between the extent of the continental shelf areas appertaining to the coastal State and the length of its coast measured in the general direction of the coastline, which would be derived from a delimitation carried out in accordance with equitable principles.[35] Wherever practical, delimitation should include that part of the continental shelf which constitutes a natural prolongation of each party's land territory into and under the sea, without encroaching upon the natural prolongation of the land territory of the other party.[36]

2. If, in the application of the preceding subparagraph, the delimitation leaves to the parties areas that overlap, the parties may agree to divide these areas into agreed proportions or, failing agreement, the areas should be divided equally, unless the parties decide on a regime of joint jurisdiction, joint use, or joint exploration for the overlapping zones or any part of them.[37]

V. Proposed Delimitation

Gulf of Venezuela

Joint jurisdiction and joint exploitation occasionally offer a palpable alternative solution to a dispute concerning overlapping claims in marine and submarine areas that contain valuable resources. However, it is suggested that the application of those principles to this controversy would not be feasible. These countries are neither morally willing nor technologically prepared to initiate such an undertaking. Such an arrangement, inevitably, would not meet the economic expectations of the two parties. Moreover, the exploitation of the natural resources of the seabed might be relatively inefficient, and, therefore, comparatively unprofitable. Thus, precise delimitation of the territorial sovereignty of each country should be applied.

The *Fisheries Case* and the *North Sea Cases* demonstrate that the interdependence between the land domain and adjacent territorial waters should be a basic consideration. A nation should be allowed to adapt its delimitation to practical needs and local requirements. While Venezuela has traditionally been a "maritime" nation, Colombia has been a "continental" nation. Venezuela has developed its major cities—Caracas, Maracaibo, and Valencia—along or near the coasts.

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34. *Id.*
35. *Id.*
36. *Id.* at 53.
37. *Id.*

On the other hand, the major cities of Colombia—Bogotá, Medellin, and Cali—are located near the center of the Andean region. In fact, the Guajira region of Colombia is almost uninhabited. Applying the rationale of the *Fisheries Case*,[38] that the land confers upon the coastal state a right to the waters off its coasts, it seems somewhat unfair to permit Colombia, which had ignored these waters until the possibility of oil exploitation was raised, to apply the median line in its favor.[39]

A second fundamental consideration is the relationship between the sea areas and the land. There should be a reasonable degree of proportionality between the length of the coast and territorial marine rights. Although Colombia's borders abut the western side of the entrance to the Gulf, approximately eighty to ninety percent of the Gulf Coast—and thus, most of the Gulf waters—are uncontested Venezuelan territory. Except for its entrance, the Gulf is surrounded by the Venezuelan coast. Since the Gulf waters are so closely linked with the land domain of Venezuela, it is reasonable to treat them as internal waters.

Finally, historical usage and local economic interests in the waters are to be considered in delimitation. Since colonial rule, the coast of Venezuela, as far northwest as Cabo de la Vela, was subject to the captain-general of Venezuela. Venezuela has always been economically dependent on its coasts and the Gulf. In fact, the major oil deposits in Venezuela are located offshore in Lake Maracaibo, only a few miles inland from the Gulf. Furthermore, discovery and production of oil in the Gulf's continental shelf would be directly tied to commercial activities in nearby Maracaibo. Hence, by treating all the waters south of Castilletes as Venezuelan internal waters, Venezuela could efficiently develop this Gulf of Venezuela-Lake Maracaibo region as a single economic zone.

Los Monjes

There is no clear law with respect to the delimitation of archipelagos. Many legal scholars argue that archipelagos should be the subject of a special regime.[40] In the *Fisheries Case*, the Court dealt specifically with the utilization of straight baselines for the purpose

38. *See* Fisheries Case, *supra* note 27, at 133.

39. *Compare* Carpio Castillo, *supra* note 4, at 85.

40. *See* Amerasinghe, *The Problem of Archipelagos in the International Law of the Sea*, 23 INT'L & COMP. L.Q. 539 (1974); O'Connell, *Mid-Ocean Archipelagos in International Law*, 45 BRIT. Y. B. INT'L L. 1 (1971).

of measuring the territorial sea off a deeply indented coast with several archipelagos. With respect to Los Monjes, however, a straight baseline with relation to the continental coast is not sought, the coast is not deeply indented, and there are no other archipelagos.

Since the multilateral conventions are not binding on the parties, equitable principles pertain. Several factors favor the inclusion of Los Monjes as a territory of Colombia. First, the Colombian continental shelf projects beyond Los Monjes and compels Colombia to reject the use of the median line between the Guajira and Los Monjes. Second, there is the geographical proximity between Los Monjes and Colombia to be considered. Finally, this archipelago is neither inhabited nor adaptable for life.

On the other hand, the weight of authority is that islands are entitled to territorial rights.[41] Islands must have the means to effect generally accepted norms such as security, customs, sanitation, policing, and vigilance. Therefore, it is proposed that Los Monjes be limited to total territorial sea and continental shelf rights to a distance of three miles measured from the center of the archipelago. This proposal, partially based on the old three mile territorial sea rule, would recognize not only the uninhabitability of Los Monjes, but also its need for the generally recognized norms mentioned above. Moreover, by limiting Los Monjes to a three mile claim, Colombia can maintain its own continental shelf claim beyond the territorial rights of Los Monjes, subject, of course, to delimitation by the median line as between the Guajira and Paraguana Peninsulas.

VI. Distinction Between Adjacent and Opposite States

Delimitation of the Gulf north of Castilletes should be more easily resolved than delimitation of the Gulf south of Castilletes. It

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41. Article 10(1) of the Convention on the Territorial Sea and the Contiguous Zone states that an island is a naturally formed area of land, surrounded by water, which is above water at high tide. Los Monjes clearly meets this requirement. In addition, article 10(2) states: "The territorial sea of an island is measured in accordance with the provisions of these articles." Thus, an island, regardless of size and other physical attributes, is entitled to a territorial sea.

Article 1 of the Convention on the Continental Shelf allocates a continental shelf to the seabed and subsoil adjacent to the coasts of islands. Considering the shallowness of the Gulf, it is apparent that Los Monjes has a legal continental shelf and, by projection, a seabed contiguous to the shelf. *See generally* J. Gamble & G. Pontecorvo, Law of the Sea: The Emerging Regime of the Oceans 137, 149 (1973).

is easier to use the median line to delimit between opposite states, such as the Guajira and Paraguana Peninsulas, than between adjacent states, such as the Colombian and Venezuelan Guajira. The continental shelf area which extends from, and divides opposite states can be claimed by each State as a natural prolongation of its territory. These prolongations meet and overlap and, therefore, can easily be delimited by a median line. Such a line generally effects an equal division of the particular area involved.

However, in the case of adjacent states, a median line often results in allocating to one of the states significant regions that are a natural prolongation of the territory of the other. The distorted effects of a median line between adjacent countries are comparatively slight when applied to territorial waters, but may be more serious when applied to the continental shelf.[42] In the case of a concave or recessed coast, such as that of the Venezuelan coast, the effect of the median line is to pull the line of the boundary inward, in the direction of the concavity. In contrast, the effect of coastal projections, or of convex or outwardly curving coasts, such as the Colombian Guajira, is to cause boundary lines drawn on an equidistant basis to leave the coast on divergent courses, thus having a widening tendency on the area of continental shelf off that coast. Thus, equidistant lines do not always divide boundaries equally, but tend to favor the country which has a projecting coastline.[43]

VII. Conclusion

Indeed, "perhaps no more interesting problem of this sort could have been posed."[44] Although the median or equidistance line is suitable for settling overlapping claims between opposite states, it is not always suitable when delimiting between adjacent states, especially when special circumstances call for a different result. The heart of this problem surfaces when the median line proposed by one country would "intrude" into traditional territorial claims of the other. Division of the area south of Castilletes is as non-negotiable to Venezuela as the use of the median line between Los Monjes and the Guajira is unacceptable to Colombia. Neither Spanish documents, international conventions, nor domestic law alone will solve the problem. Instead, equitable principles taking into account all the relevant circumstances and traditions of the two countries must govern.

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42. *Compare* North Sea Cases, *supra* note 26, at 36-37.
43. *See id.* at 17-18.
44. Boggs, *supra* note 4.

Thus, this author proposes that recognition of the Gulf south of Castilletes as internal Venezuelan waters will resolve the problem more satisfactorily than use of the median line. Furthermore, Los Monjes should be independently limited to total territorial sea rights of three miles in order to recognize the natural prolongation of the Colombian coast. Finally, the remaining area at the entrance of the Gulf should be delimited by the median line.